IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 23RD MAY 2007 / 2ND JYAISHTA 1929

CRL.A.No. 290 of 1999()

SC.211/1995 of I ADDL. ASSISTANT SESSIONS COURT, THRISSUR

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APPELLANT: COMPLAINANT:-

STATE -REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM

BY PUBLIC PROSECUTOR SRI.C.K.SURESH

RESPONDENTS: ACCUSED 1 & 3 TO 6:

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1. SATHYAN, S/O.KALARIKKAL SEKHARAN, ARTHAT VILLAGE, CHEMMANNUR DESOM.
2. SUNIL, S/O. MARASARI VASU, ARTHAT VILLAGE, CHEMMANNUR DESOM.
3. SREEHARI, S/O.PALAKKAL VEETTIL PRABHAKARAN NAIR, ARTHAT VILLAGE, CHEMMANNUR DESOM
4. RAJEEVAN, S/O.CHEMMANNUR VEETTIL THANKALU, ARTHAT VILLAGE, CHEMMANNUR DESOM.
5. PRAKASAN, S/O.KALARIKKAL KUTTAPPAN, ARTHAT VILLAGE, CHEMMANNUR DESOM.

BY ADV. SRI.C.HARIKUMAR

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 25-5-2007 , THE COURT ON 23/05/2007 DELIVERED THE FOLLOWING:

K. Thankappan, J.

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Crl.A.No. 290 of 1999

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Dated this the 23rd day of May, 2007

JUDGMENT

State has assailed the judgment in S.C.No.211/95 on the file of the Court of the Assistant Sessions Judge, Thrissur. Respondents 1 and 3 to 6 along with one Pradeep Kumar were charge-sheeted for the offence punishable under sections 143, 147, 148, 323, 324 and 307 read with section 149 IPC. The prosecution case was that on 5-9-1994 at about 10.30 A.M. the accused persons formed themselves into an unlawful assembly with the common object of murdering PW1 and in furtherance of the common intention they attacked and caused injuries to him. To prove the case, the prosecution examined PW1 to PW10 and marked Exts.P1 to P7. MO1 and MO2 were also marked. After closing the prosecution evidence, the accused were questioned under section 313 Cr.P.C. They denied the prosecution allegation and stated that the case was foisted against them due to political enmity. After considering the entire evidence, the trial court found that the prosecution has failed to establish the guilt of the respondents beyond the shadow of doubt and hence they were acquitted.

2. The prosecution case against the respondents is that on the date of the incident when PW1 went to fetch an autorickshaw, they prevented him, rounded him and shouted that they would finish him. It is also alleged that 1st accused shouted "kill

him", the 2nd accused stabbed him towards his neck and when he warded off the stab, the stab hit his upper part of the left hand inner side and due to the stab the muscle was cut and he sustained injuries. On hearing his cry, neighbours came there. The respondents mainly attacked the nature of the injury. According to them, there was no possibility of causing any such injury to PW1. After considering the entire evidence, the trial court by the impugned order acquitted the accused. Against the above finding this appeal is filed.

3. This Court heard the learned Public Prosecutor appearing for the appellant and the learned counsel appearing for the respondents. PW1 who is the injured stated that on 5-9-94 at about 10.30 a.m. when he had gone to fetch an autorickshaw, the respondents came from the opposite direction, prevented him, beated with hands and kicked him and the 2nd respondent stabbed him towards his neck. He also stated that when he warded off the stab and then stab hit his upper part of the left hand inner side. It is also the case of PW1 that there was a political clash before the incident between the RSS and Marxist. PW4 who was the doctor stated that he had examined PW1 who came with an allegation that he was stabbed with sword. He noted an injury with 20 c.m. Long curve wound over the dorsal aspect of left arm, cutting the muscle exposing the humerus and radial nerve. He also noted

that the injury was a minor injury. He admitted that it was possible due to fall. In his evidence PW1 stated that he fell down on the road side. The defence case is that PW1 had a simple injury and that was not sufficient to cause death and that the injury can be possible by some other means also. The trial court after considering the evidence found that since there was no corroborating evidence, the possibility of fall could not be ruled out. The trial court also found that two persons who was with PW1 were not examined and as such about the actual stab, there was no evidence to corroborate the evidence of PW1. The trial court further found that even though some overt act of the 2nd respondent was deposed to by the witness, no one is speaking any thing about the role of the remaining accused. Hence, the trial court acquitted the respondents stating that the prosecution had failed to establish the guilt of the respondents beyond the shadow of doubt.

4. The prosecution is mainly relied on the evidence of PW1, the injured, PW2 and PW3, eye witnesses. According to PW1, two persons were with him, but they were not examined. There is no corroborative evidence of PW1. The trial court after considering the evidence, found that there was some doubt in the prosecution case.

4. Having considered the arguments of the learned Public Prosecutor and the learned counsel for the respondents and after having perused the evidence, this Court is of the view that the finding of the trial court does not require any interference by this Court. Hence, the appeal fails and it stands dismissed.

K. Thankappan,
Judge.

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K. Thankappan, J.

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Judgment

23-5-2007